Filed 1/4/13 In re E.S. CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re E.S., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. P.S. et al., Defendants and Appellants.	D062398 (Super. Ct. No. NJ14416D)

APPEALS from an order of the Superior Court of San Diego County, Gary M. Bubis, Judge. Affirmed.

P.S. and Michael S. (together, the parents) appeal following the first postpermanency planning review hearing (Welf. & Inst. Code, § 366.3)[1] in the juvenile dependency case of their daughter, E.S. The parents contend the juvenile court erred by

1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

failing to make orders to promote progress toward returning E.S. to their custody. We affirm.

BACKGROUND

In June 2010, the Los Angeles County Department of Children and Family Services filed dependency petitions for 10-year-old E.S.; her two sisters, ages 13 and 15; and her two brothers, ages eight and 12 (together, the children). The petitions alleged that on June 26, Michael hit E.S. on the leg with a belt and choked her 15-year-old sister, leaving marks on her neck. The same day, P.S. struck that sister in the stomach with her fists. On previous occasions, Michael had hit both sisters and both brothers with a belt. The parents were aware of each other's actions.

The belt left a four-inch long bruise on E.S.'s thigh. Michael admitted "using a belt" on her but denied causing the bruise. The parents refused to acknowledge they had harmed the children. E.S. minimized Michael's behavior, and an investigator was concerned she might have been coached. One of the children said Michael had been physically and emotionally abusing them for three years.

The children were detained in foster care. The Los Angeles County Juvenile Court sustained the petitions[2] and ordered supervised visitation. For the first three months of the case, the parents visited E.S. During that time, E.S. said she wished to return home, but also said she wished to remain in her foster home and did not wish to go home. She appeared nervous, worried and jittery, and showed signs of depression. She

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2 The court dismissed allegations of further physical abuse by the parents; domestic violence in the children's presence; and Michael's marijuana use.

admitted the physical abuse made her anxious. She hesitated to speak to an investigator for fear the parents would retaliate with more physical abuse.

In September 2010, the parents were arrested and charged with felony child endangerment, and the criminal court issued restraining orders prohibiting the parents from contacting the children.[3] In October, the Los Angeles County Juvenile Court ordered the children removed from the parents' custody and placed in foster care, and ordered reunification services for the parents, with supervised visits once the restraining orders allowed. P.S. was released from jail in October and moved to San Diego County. In December, this case was transferred to San Diego County. Michael joined P.S. in San Diego County after his release from jail in early 2011.

E.S. was attending psychotherapy and was given a diagnosis of major depressive disorder, recurrent, moderate. Among the therapeutic goals were elimination of her thoughts of suicide, improvement of her sleeping and eating patterns and her ability to communicate her emotional needs and feelings. E.S. saw a succession of therapists, with the first change of therapists occurring when E.S. moved from Los Angeles County to San Diego County. The second therapist worked to prepare E.S. for conjoint therapy with the parents, but then left the counseling center E.S. attended.

By April 4, 2011, E.S. was refusing all contact with the parents. The San Diego County Health and Human Services Agency (the Agency) suggested telephone conversations between the parents and E.S. with her therapist's participation. On April 5,

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[3] According to the parents' trial attorneys, the parents were acquitted.

the juvenile court gave the Agency discretion to allow unsupervised, overnight and weekend visits, and to commence a 60-day visit. On April 26, E.S. told the social worker she was upset with the parents because "[t]hey [hit] me my whole life" and "lied about what they did." E.S. said that when the parents heard that she was calling her foster parent "mom," the parents laughed and this made E.S. feel sad. E.S. was afraid the parents were "going to come and take her." While crying and shaking, she said, "They have all the power and I can't do anything about it. I'm scared I'm going to go back." E.S. stated, "They can make it look like I'm lying. I'm scared. I don't want to be beat again. . . . I gave them lots of chances." E.S. said Michael had beaten P.S., and when the family lived in Nevada, Michael had two other persons put E.S. in a closet and hit her with a broom.

On May 20, 2011, E.S.'s attorney filed a section 388 petition seeking modification of the October 2010 order for supervised visitation. The petition requested an order prohibiting contact between E.S. and the parents. The court granted the petition. The court gave the social worker discretion to allow supervised, unsupervised visits, overnight and weekend visits, and to commence a 60-day visit, all with the concurrence of E.S.'s counsel.

E.S.'s symptoms of trauma increased when there was a discussion of visitation or returning to the parents' home. In July 2011, when the social worker raised the subject of contact, E.S. became teary, recounted past traumatic incidents and said the parents would never change. E.S. began calling the parents by their first names and said she wished to be adopted.

E.S.'s foster care moves caused her additional difficulties and setbacks. By August 2011, she had lived in at least four foster homes. Most if not all of the homes were foster family agency homes, that is, homes providing a higher and more specialized level of care. (Health & Saf. Code, § 1502, subd. (a)(4); *Hosanna Homes v. County of Alameda Social Services Agency* (2005) 129 Cal.App.4th 1440, 1444, fn. 1.)

On October 12, 2011, E.S.'s third therapist reported E.S. was better able to communicate her emotional needs. The therapist said the counseling center was no longer able to provide services because E.S. was no longer speaking of suicide or eating and sleeping difficulties. E.S. no longer cried when the topic of visitation arose, but maintained she did not want to visit the parents. E.S. would not discuss the topic in therapy and refused to participate in family sessions.

On October 12, 2011, the social worker raised the topic of conjoint therapy with E.S. Rather than saying "no," as she had done previously, E.S. said "maybe." In November, E.S. resumed sessions with one of her previous therapists. Progress was slow. E.S. refused to sign her treatment plan because one of the stated goals was preparation for family sessions. She believed the parents were unapologetic and would not take responsibility for their past actions, and thus she would be hurt again. E.S.'s therapist reported E.S. "still has a lot of anger, hurt feelings, and trauma responses due to the past history." The therapist who conducted family sessions with E.S.'s sisters and the parents reported "the family may be at a stalemate" because the parents denied the past abuse and the sisters wanted the parents to proffer a genuine apology.

At the 18-month review hearing in December 2011, the court terminated reunification services, identified another planned permanent living arrangement (APPLA) as E.S.'s permanent plan and continued her placement in foster care. (§ 366.22, subd. (a); see *In re Stuart S.* (2002) 104 Cal.App.4th 203, 209.)

In March 2012, E.S. saw the parents in a public place by chance and turned and ran away. In April, E.S. disclosed that P.S. had physically abused her. On May 31, E.S.'s therapy sessions ended, apparently because they were no longer deemed medically necessary, although the therapist believed E.S. would benefit from further sessions. The social worker obtained approval for more sessions. By June, E.S. was participating in family therapy with her oldest sister and her foster mother as a means of increasing E.S.'s comfort in discussing family issues. E.S. had also begun to work with a "youth partner" to practice assertiveness and build self-esteem. E.S. was thriving in her foster home and considered the foster family her "real family."

At the first postpermanency planning review hearing on July 26, 2012, the parents sought E.S.'s return to their custody. Alternatively, Michael's counsel proposed conjoint therapy, visitation and individual therapy for E.S. E.S. had been in her foster home for nearly a year and was happy there. Her siblings had been returned to the parents[4] and the family was receiving services. There had been no visits between the parents and E.S. because she did not want them. E.S. had met her treatment goals and was not in therapy.

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4 E.S.'s brothers were returned in May 2011. Her 15-and-one-half-year-old sister was returned in April or May 2012, and her 17-year-old sister was returned during the four weeks preceding the hearing.

She refused to participate in conjoint therapy with the parents because they had physically abused her, and she did not think they had changed. E.S. was scared to go home and told the social worker she would run away if she were placed with the parents.

The social worker believed the parents did not pose a physical risk to E.S.; P.S. would not intentionally inflict emotional harm on her; and E.S. would not be subject to emotional or verbal abuse in the home. The social worker recommended that E.S. not be returned to the parents, but would recommend return if E.S. expressed a desire to return. The social worker believed it was not in E.S.'s best interests to go home "[a]s of today" and testified "they need therapy or something in between for a few months anyway." The social worker would continue to encourage E.S. to forgive the parents and participate in therapy with them. E.S.'s court-appointed special advocate agreed with the social worker's recommendations, and believed visitation would not be in E.S.'s best interests.

Immediately before the hearing, the court met with 12-year-old E.S. in chambers. During their lengthy discussion, the court cited the goal of reunification and asked E.S. to consider forgiving the parents. At the close of the hearing, after reviewing the Agency's reports and listening to testimony by the social worker and argument by counsel, the court concluded there had not been a change of circumstances and it was not in E.S.'s best interests to be returned to the parents. The court found E.S. was not a proper subject for adoption or guardianship. The court continued E.S.'s foster care placement and permanent plan and authorized further therapy for her, with progress reports to be provided to the social worker. The court identified "the specific goal of potential return home"; found the likely date for return or a change of permanent plan was in six months;

and set a review hearing for January 24, 2013. Addressing E.S., who was in the courtroom, the court again asked her to consider forgiving the parents. The court left intact the May 2011 no contact order and the Agency's discretion to allow visits with the concurrence of E.S.'s counsel.

DISCUSSION

After the court orders APPLA as the permanent plan, "the status of the child shall be reviewed at least every six months." (§ 366.3, subd. (d); Cal. Rules of Court, rule 5.740(b).) "At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, . . . or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest[s] of the child, whether the child should be placed in [APPLA]. The court shall order that a hearing be held pursuant to Section 366.26, unless it determines by clear and convincing evidence that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest[s] of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the [Agency] has determined it is unlikely that the child will be adopted or one of the conditions [exceptions to adoption] described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that

the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26. . . ." (§ 366.3, subd. (h).)

At the review hearing, "[i]t shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents up to a period of six months, and family maintenance services, as needed for an additional six months in order to return the child to a safe home environment." (§ 366.3, subd. (f).) "[T]he burden and standard of proof . . . is the same as under section 388." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 226.) Following the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount and the focus is on the child's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) On appeal, "[t]he juvenile court's judgment is presumed to be correct, and it is appellant's burden to affirmatively show error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) We conclude there was no abuse of discretion in this case. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

Noting that E.S.'s siblings have been returned to their care, the parents claim they "pose no protective risk to [E.S.]." They argue the court's order was "based on its misguided belief that it must let [E.S.] determine her own best interest" and will result in her "perpetual impermanence in foster care." E.S. is not, however, fated to a live out her life in foster care. Her permanent plan will be examined at the next review hearing in

January 2013, far short of perpetuity. Moreover, the parents' reunification with E.S.'s siblings is not dispositive here. E.S.'s older sisters were independent in outlook, while E.S. craved direction from a parental figure and was still developing as an individual. As the juvenile court aptly noted, E.S. is unique and deserves to be treated as such. She was severely traumatized by the parents' physical abuse, required therapy to cope with the trauma and was still in the process of healing. One of E.S.'s treatment goals was rapprochement with the parents. After approximately one and one-half years of individual therapy and shortly before the hearing, E.S. participated in family therapy with her oldest sister and her foster mother. In the month before the hearing, E.S. had two visits with her other sister, after earlier refusing any contact with her. These were steps toward E.S.'s possible future psychological readiness for contact with the parents. E.S.'s foster parents, with whom she had lived for nearly a year, also provided much needed emotional support.

While the court properly considered E.S.'s wish to have no contact with the parents (*In re Julie M.* (1999) 69 Cal.App.4th 41, 51), it did not allow her to determine her own best interests. Had the court done so, it would have ordered an adoption assessment and set a section 366.26 hearing, as E.S. wished to be adopted. Rather, the court properly considered "the possibility of adverse psychological consequences" of forced contact. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1238.) E.S. remained extremely frightened of the parents. Based on the facts of this case, that fear is understandable, and the parents' characterization of E.S.'s fear as "groundless" shows their own lack of understanding.

There was no error.

DISPOSITION

The order is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.